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Via E-mail koppenhoefer@millercafield.com

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Re: RE: Information Not Provided During Required Rule 26 (f) Conference

Dear Kate,

As a follow-up to our conference this morning, we are very disappointed that Plaintiff's counsel was not prepared to discuss the issue of Electronically Stored Information (ESI) in a manner that would allow meaningful completion of the Joint Report, particularly Rule 26(f)(3)(C). We were also quite surprised at your representation that you lacked information or knowledge on these topics. Plaintiff's counsel necessarily had to have reviewed these ESI files when it received the preservation letter in July 2010, and before filing the Complaint (Oct. 2010), the Amended Complaint (Nov 2010), the TRO (Dec 2010) and/or the Preliminary Injunction (Jan 2011).

Nonetheless, in an effort to accommodate your request for a "written" request of the information Defendants' counsel would need in order to properly prepare the Joint Scheduling Report regarding ESI, I set forth the categories of ESI that appear likely to exist (based upon the allegations in the Amended Complaint). Since you are the Plaintiff's counsel you are in the best position to know all of the various categories that do exist. Therefore, the limited listing below should not limit your obligation to make full disclosure on this important topic for purposes of finalizing the Joint Status Report and for purposes of the case as a whole.

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A. The original equipment (ASR-10 and computers, discs, hard drives etc) used to make the alleged 1998 original work and 1999 derivative work, and the "many variations." Does Plaintiff have possession of this equipment for inspection and review (including the hard drives)? We were previously told Mr. Pringle "got rid" of this equipment sometime in the past. Is this true, and thus there is no ESI issue relating to the original equipment? If the equipment exists, and will be produced by Plaintiff what form is the equipment? What form does the ESI residing on the equipment take? Is it possible for Plaintiff to produce copies with all the creation, access and modified dates, and if so what do you believe to be the most cost efficient form that the ESI (with such metadata) can be produced? Is access and examination of the original discs going to be required because they cannot be easily copied and produced? Will forensic examination be required, or is the ESI in a form that can be produced natively, with all appropriate metadata? Is special equipment needed to access the ESI, or review it after it is produced (i.e. is an ASR-10 required, are there any proprietary computer languages used)? Do we have any issues regarding deletion or lack of preservation (inadvertent or otherwise)?

B. Back up discs, NRG files, or other electronically stored information that may have originated on the original equipment of original Take a Dive, Take a Dive Derivative work, and the many variations. What is the volume we are talking about? What form does this ESI take? Is it possible for Plaintiff to produce copies with all the creation, accessed and modified dates by disc, or is access and examination of the original discs, backup files, NRG files etc. going to be required? If capable of being produced what do you believe to be the most cost efficient form that the ESI with relevant metadata can be produced? Will forensic examination be required, or is it in a form that can be produced natively, with all appropriate metadata? Is special equipment required to access ESI or review it after it is produced? (i.e. we were previously told that the purchase of an ASR 10 would be required to access certain ESI.) Do we have any issues regarding deletion or lack of preservation (inadvertent or otherwise)?

C. With respect to "The" 1999 sound recording upon which the sampling claim is based and the Copyright Registration is based, what form of ESI does this take? Is it possible to produce copies with all the creation, accessed and modified dates by disc, or is access and examination of the original discs going to be required? Will forensic examination be required, or is the ESI in a form that can be produced natively, with all appropriate metadata? If capable of being produced, what do you believe to be the most cost efficient form that the ESI with metadata can be produced? Will forensic examination be required, or is it in a form that can be produced natively, with all appropriate metadata? Is special equipment required to access ESI or review it after it is produced? (i.e. we were previously told that the purchase of an ASR 10 would be required to access certain ESI.) Do we have any issues regarding deletion or lack of preservation (inadvertent or otherwise)?

D. With respect to the copies of any recording Plaintiff claims to have sent to any Defendant, do any originals exist or are we talking about ESI as the sole evidence for these recordings. If ESI, what form does the ESI take? What is the volume we are talking about? Is it possible to produce copies with all the accessed, creation and modified dates on disc, or is access and examination of the original discs going to be required? Will forensic examination be required, or is it in a form that can be produced natively, with all appropriate metadata? If capable of being produced what do

you believe to be the most cost efficient form that the ESI with metadata can be produced? Is special equipment required to access ESI or review it after it is produced? (i.e. we were previously told that the purchase of an ASR 10 would be required to access certain ESI.). Do we have any issues regarding deletion or lack of preservation (inadvertent or otherwise)?

E. The 2009 to present computer(s), ASR-10, and discs and files (according to Pringles' counsel Mr. Pringle bought a new ASR-10 about a year before approaching Defendants' counsel in May 2010), which is conveniently around the same time as the release of the accused song. (Current Equipment) Does Plaintiff have possession of this 2009-present equipment for inspection and forensic review of the hard drives? What is the volume of this ESI, including number of computers, etc.? If the physical equipment exists, what form does the ESI on the equipment take? Is it possible to produce copies of the ESI with all the creation, accessed and modified dates by discs, or is access and examination of the original discs and equipment going to be required? Will forensic examination be required, or is the ESI in a form that can be produced natively, with all appropriate metadata? If capable of being produced what do you believe to be the most cost efficient form that the ESI with metadata can be produced? Do we have any issues regarding deletion or lack of preservation (inadvertent or otherwise)?

F. The preserved computer files pursuant to Defendants preservation letter request made in 2010. (Preserved ESI) What is the volume of the ESI that has been preserved? What form does this ESI exist? Will forensic examination be required, or is it in a form that can be produced natively, with all appropriate metadata? If capable of being produced what do you believe to be the most cost efficient form that the ESI with metadata can be produced? Do we have any issues regarding deletion or lack of preservation (inadvertent or otherwise)?

G. Whatever equipment Mr. Pringle used (from the date he "got rid of original equipment" to 2009 when he got a new ASR 10) to create and distribute copies of the works at issue. (Interim Equipment) What is the volume of the ESI that has been preserved? What form does this ESI exist? Will forensic examination be required, or is it in a form that can be produced natively, with all appropriate metadata? If capable of being produced what do you believe to be the most cost efficient form that the ESI with metadata can be produced? Do we have any issues regarding deletion or lack of preservation (inadvertent or otherwise)?

H. Is there any computer equipment Mr. Pringle uses or used over the relevant time period 1998-Present that are separate and apart from the equipment used for creation of his works that are likely to contain relevant ESI (i.e. emails or other information). (Additional Sources of ESI) If so, what form does this ESI take? Is it possible to produce copies with all the accessed, created and modified dates on the discs, or is access and examination of the original discs going to be required? Will forensic examination be required, or is it in a form that can be produced natively, with all appropriate metadata? If capable of being produced what do you believe to be the most cost efficient form that the ESI with metadata can be produced? Do we have any issues regarding deletion or lack of preservation (inadvertent or otherwise)?

February 14, 2011

Page 4

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Please provide us with the above requested information, so that we can have a fair opportunity to prepare the ESI section of the Joint Status Report.

Please also advise when you expect to circulate the draft report. As I informed you last week we have many different clients and will need to have as much lead time as possible to finalize and get the draft report approved by our various clients. It is prejudicial for you to continue to wait to circulate the draft.

Thanks in advance for your cooperation on the above.

Very truly yours,

/s/ Kara Cengar

Kara E. F. Cengar

KEC

Cc: Linda Burrow (via email)
Barry Slotnik (via email)
Tal Dickstein (via email)
Jonathan Pink (via email)
Plaintiff's co-counsel